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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,707	08/10/2005	Tomohiro Inoue	2946-188	7455
6449 7590 09/06/2007 ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			EXAMINER	
			SINES, BRIAN J	
			ART UNIT	PAPER NUMBER
			1743	
			NOTIFICATION DATE	DELIVERY MODE
			09/06/2007	ELECTRONIC

## Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

	Application No.	Applicant(s)					
	10/522,707	INOUE ET AL.					
Office Action Summary	Examiner	Art Unit					
	Brian J. Sines	1743					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address							
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS,							
WHICHEVER IS LONGER, FROM THE MAILING DA  - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period v  - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim vill apply and will expire SIX (6) MONTHS from , cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D (35 U.S.C. § 133).					
Status							
1) Responsive to communication(s) filed on 6/20/	1) Responsive to communication(s) filed on 6/20/2007.						
2a) This action is <b>FINAL</b> . 2b) ⊠ This	This action is <b>FINAL</b> . 2b)⊠ This action is non-final.						
,—	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.							
Disposition of Claims							
4)⊠ Claim(s) <u>8 and 10</u> is/are pending in the application.							
4a) Of the above claim(s) is/are withdrawn from consideration.							
5) Claim(s) is/are allowed.							
6)⊠ Claim(s) <u>8 and 10</u> is/are rejected.	6)⊠ Claim(s) <u>8 and 10</u> is/are rejected.						
	7) Claim(s) is/are objected to.						
8) Claim(s) are subject to restriction and/or election requirement.							
Application Papers							
9) The specification is objected to by the Examine	r.						
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11)☐ The oath or declaration is objected to by the Ex	caminer. Note the attached Office	Action or form PTO-152.					
Priority under 35 U.S.C. § 119							
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).							
a) ☐ All b) ☐ Some * c) ☐ None of:							
1. Certified copies of the priority documents have been received.							
2. Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage							
application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.							
" See the attached detailed Office action for a list	or the certified copies not receive	ea.					
Attachment(s)							
1) Notice of References Cited (PTO-892)	4) Interview Summary						
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	Paper No(s)/Mail Do 5) Notice of Informal F 6) Other:						

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### **DETAILED ACTION**

#### Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1 17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/20/2007 has been entered.

## Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

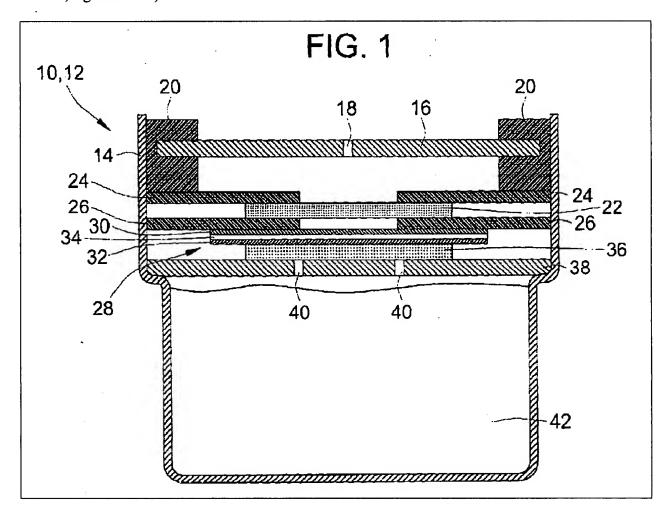
Claims 8 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Rabbett et al. (U.S. Pat. No. 6,948,352 B2, filed 2/7/2002) ("Rabbett").

Regarding claim 8, Rabbett teaches a sensing apparatus 10 comprising: a sensor body having a membrane electrode assembly 28 comprising: an electrolyte membrane (ion exchange membrane 34); a sensing electrode 30; a counter electrode 32; and a water reservoir 42 positioned at one side of the sensor body and supplying water vapor to the membrane electrode assembly; a cap formed by gasket 20 or housing 46 comprising an opening 48; and a thin nonporous metal plate (rigid stainless steel disk 16) between the cap and the membrane electrode assembly, having a diffusion control hole (aperture 18) connected to the opening of the

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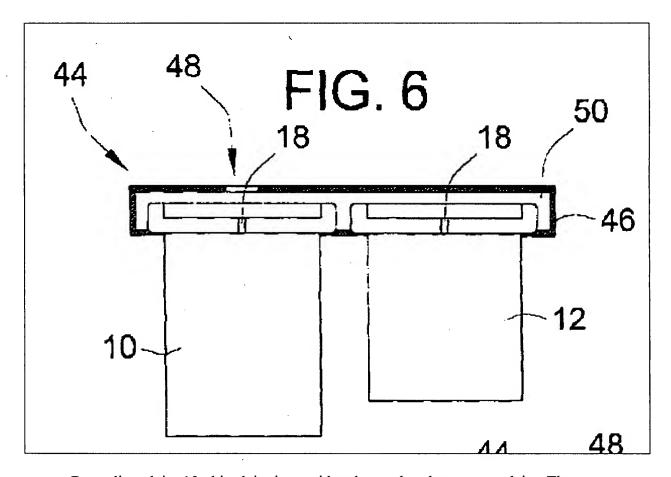
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cap and having a smaller diameter than that of the opening of the cap (see col. 5, line 41 - col. 8, line 47; figures 1 - 6).



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Regarding claim 10, this claim is considered a product-by-process claim. The determination of patentability is based upon the apparatus structure itself. The patentability of a product or apparatus does not depend on its method of production or formation. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. See *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (see MPEP § 2113).

## Response to Arguments

Applicant's arguments with respect to the present claims have been considered but are moot in view of the new ground(s) of rejection. The oath or declaration filed 5/21/2007 has been

considered by the examiner. A certified copy of foreign priority application JP 2001-157167 was received 5/21/2007.

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Sines, Ph.D., whose telephone number is (571) 272-1263. The examiner can normally be reached on Monday - Friday (11 AM - 8 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

> Brian J. Sines Art Unit 1743
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> Dua
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> Mia
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> Mia Primary Examiner

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